

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, et al.,

Plaintiffs,

vs.

PETER FRANCHOT,

Defendant.

Case No. 1:21-cv-410-DKC

**MOTION OF TAX LAW PROFESSORS FOR LEAVE TO FILE AS *AMICI CURIAE* IN
SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Professors Darien Shanske and Young Ran (Christine) Kim (collectively, “Tax Law Professors”) respectfully ask that the Court grant leave to file the attached *amici curiae* brief in support of Defendant’s Response in Opposition to Plaintiffs’ Motion for Summary Judgment.

Dkt. 36. Counsel for Tax Law Professors has contacted all parties regarding this motion.

Counsel is informed that Plaintiffs take no position on this motion, and Defendant consents.

Plaintiffs have filed a challenge to Maryland’s recently-passed tax on the revenues that entities of a certain size derive from digital advertising services in the state, Md. Code Ann., Tax-Gen. §§ 7.5-102, 7.5-103, and now seeks to enjoin implementation of that tax by Defendant.

Dkt. 1. Professors Shanske and Kim are professors of tax law with particular expertise and interest in state and local taxation, as well as digital services taxes. They seek to file this motion to provide information regarding the unique nature of digital advertising as compared to non-digital services, the implications for tax policy, and how these issues should affect the court’s analysis, in particular under the Internet Tax Freedom Act.

This Court has inherent authority to allow *amici curiae* to participate and assist the Court. See *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996). Because the Tax Law Professors have a “special interest in the subject matter of [this] suit” and their brief provides “timely and useful” information for this Court to consider when adjudicating Plaintiff’s motion for summary judgment, *id.*, the Professors respectfully request that this Court grant leave to file the attached *amicus curiae* brief in support of Defendant’s Response in Opposition to Plaintiff’s Motion for Summary Judgment. See Dkt. 36.

Under Local Rules 105.12(b), a motion for leave to file an *amici* brief must state “(1) the movant’s interest; (2) the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case; (3) which party’s filing the brief supports, if any; (4) whether a

party's counsel authored the brief in whole or part; and (5) whether a party or its counsel contributed money to fund the preparation and/or submission of the brief."

Interests: The Tax Law Professors are experts in the law of taxation. Professor Shanske is a professor of law at the University of California, Davis School of Law, with significant experience advising state and local governments on tax law. He is a nationally recognized expert in taxation, particularly state and local taxation and the application of federalism principles to state and local tax law. He has written extensively on tax law and public finance, including dozens of journal articles.¹

Professor Kim is an associate professor of law at the University of Utah College of Law who specializes in taxation, with a particular expertise in business tax, the intersection of tax and technology, and cross-border taxation. Professor Kim teaches Federal Income Tax, Taxation of Business Entities, and International Tax. She has written extensively on taxation issues in the new digital era, including digital services taxes.²

Plaintiffs in this case ask the court to apply the federal Internet Tax Freedom Act to preempt Maryland's tax, and, by inference, similar proposed taxes in other states. As experts in the legal issues underlying Plaintiffs' claims, Professors Shanske and Kim have a special interest in ensuring that this Court has a fulsome record concerning the nature of Maryland's tax and the effects of Plaintiffs' claim before ruling on Plaintiffs' motion for summary judgment.

Desirability and Relevance: The Tax Law Professors are widely published and recognized experts on the legal issues underlying Plaintiffs' claims. The attached brief distills their expertise to "provide[] helpful information to the court regarding positions taken by the [parties]." *Washington Gas Light Co. v. Prince George's Cnty. Council*, Civil Action No. DKC

¹ See Professor Darien Shanske's CV, attached as Exhibit A.

² See Professor Young Ran (Christine) Kim's CV, attached as Exhibit B.

08-0967, 2012 WL 832756, at *3 (D. Md. Mar. 9, 2012). Professors Shanske and Kim are in a position to further explain the operations and business models of digital advertising companies, their implications for tax policy, and the prevailing approach taken by the Supreme Court when interpreting the scope of federal preemption in the context of state tax policy, particularly under the Internet Tax Freedom Act.

Support, Authorship, and Contribution: The Tax Law Professors support Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment. *See* Dkt. 36. No counsel for any party authored the brief, in whole or in part, and no party or counsel contributed money to fund preparation or submission of the brief.

Accordingly, Professors Shanske and Kim respectfully request leave of this Court to file their proposed *amicus curiae* brief.

Dated: September 20, 2021

Respectfully submitted,

s/ Patrick Thronson
Patrick Thronson (MD Bar 18906)
JANET, JANET & SUGGS, LLC
Executive Centre at Hooks Lane
4 Reservoir Circle, Suite 200
Baltimore, MD 21208
Tel.: (410) 653-3200
pthronson@jjsjustice.com

Aman George (DC Bar 1028446)*
Samara M. Spence (TN Bar 031484)*
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, D.C. 20043
Tel.: (202) 448-9090
ageorge@democracyforward.org
sspence@democracyforward.org

Counsel for Tax Law Professors

* *Pro hac vice* motion pending

CERTIFICATE OF SERVICE

I certify that on September 20, 2021, the above motion was filed using the court's Cm/ECF system, which will notify all registered counsel.

Dated: September 20, 2021

Respectfully submitted,

s/ *Patrick Thronson*
Counsel for *Amici*